IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9022 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

---

HARPALSINH DIGVIJAYSINH RANA

Versus

STATE OF GUJARAT

---

Appearance:

M/S THAKKAR ASSOC. for Petitioner

Mr.Uday Bhatt, AGP for Respondent No. 1, 2, 3

---

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 30/11/2000

ORAL JUDGEMENT

#. By way of this petition, the petitioner has challenged his detention order passed by the Police Commissioner, Rajkot City, Rajkot on 16.7.2000 in exercise of the powers conferred upon him under section

3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (PASA Act for short). The petitioner came to be detained in pursuance to the order from July 20,2000.

#. The grounds of detention are placed on record denote that the petitioner was a member of police force of the city and on 5.7.2000 before the Rajkot city police station and Junagadh B Division police station in all four offences were registered against the petitioner under section 66(b), 65(a) and (e) , 116 (b) and 81 of the Bombay Prohibition Act. Taking into consideration the investigation in the above said crimes registered against the present petitioner, the detaining authority came to the conclusion that the petitioner was a bootlegger within the meaning of section 2(b) of the PASA Act. The detaining authority also considered that less drastic remedy would be of no avail to prevent the petitioner from indulging in illegal and anti social activity of selling of illegal liquor and thereby causing harm to public health and public order and hence the order impugned came to be passed by the detaining authority.

#. Learned advocate Ms. Suman Pahwa on behalf of Thakkar Associates for the petitioner and Mr.Uday Bhatt learned AGP were heard.

#. Various of grounds are urged to challenge the order impugned passed against the petitioner. It appears that the case of the petitioner is squarely covered by a decision of the Apex Court in the matter of Harish Pahwa vs. State of U.P. & ors. reported in AIR 1981 SC 1126 wherein the Apex Court observed regarding detention and consideration of the representation of the detenu that the State is expected to proceed to determine the representation with utmost expedition which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously until final decision is taken and communicated to the detenu. Relying upon this ratio this Court in the matter of Urmilaben Navnitlal Gandhi vs. Commissioner of Police, Surat City & ors. a decision reported in 1994(2) GLH UJ 10 observed that 5 days delay in that case from 16.10.1983 to 21.10.1983 in forwarding the representation, had been unexplained by the respondent in any manner except intervening holidays. This court further observed that the detaining authority was not alive to the urgency of forwarding the representation to the State Government for its consideration on merits which ultimately vitiated the detention of the detenu.

#. As per the facts of this case also the order came to be passed on 15.7.2000. The petitioner was detained from 20.7.2000. The petitioner preferred the representation against the detention order to the detaining authority i.e. Police Commissioner, Rajkot City, Rajkot on 8.8.2000 through his advocate. Xerox copy of the postal acknowledgment is placed on record at Annexure.D of the memo of the petition denoting that the representation was received by the Police Commissioner on 11.8.2000. However, vide communication dated 19.8.2000 the petitioner was informed that his representation was forwarded to the Government for necessary action. This denotes that the machinery concerned, took 7 days to forward the representation of the petitioner to the Government for consideration. There is no explanation on record for this delay except the submission as to intervening holidays. In similar circumstances, as aforesaid in the abovementioned case of Urmilaben N.Gandhi (Supra) the bench of this court held that delay of 5 days in forwarding the representation to the Government vitiated the continuation of the detention of the detenu. Therefore as per the fact of this case which is clearly covered by the above referred two decisions, the de tention order passed against the petitioner is required to be set aside.

#. Learned advocate for the petitioner places on record the original communication of the Police Commissioner, Rajkot City, Rajkot dated 19.8.2000 which is taken on record.

#. In view of the above discussion the detention order passed against the petitioner on 15.7.2000 by the Police Commissioner, Rajkot City under the PASA act is hereby quashed and set aside. The petitioner Harpalsinh Digvijaysinh Rana is hereby ordered to be set at liberty forthwith,if he is not required to be detained for any other purposes. Rule is made absolute.

(J.R.Vora.J)

govindan